

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MCQUILKIN,

Defendant.

CRIMINAL ACTION

No. 94-356-02

MEMORANDUM

On November 4, 1994, defendant John McQuilkin pleaded guilty to various charges related to the distribution of methamphetamine. Dkt. 26. He was later sentenced to 60 months imprisonment and 6 years of supervised release. Dkt. 45. It is undisputed that, as a result of his conviction, McQuilkin is prohibited from holding certain positions—including, inter alia, positions of authority within labor organizations—for a period of 13 years following his release from imprisonment. See 29 U.S.C. § 504. McQuilkin was released on April 9, 1999, and his disability thus remains in effect until April 9, 2012.

On July 27, 2010, McQuilkin filed a pro se Motion for Relief by Reduction of the Length of Disability, dkt. 144, which the court construes as a motion, under § 504, to “set[] a lesser period” of disability. The statute permits such a reduction prior to the expiration of the 13-year bar if the sentencing judge “determines that such person’s service in any capacity referred to in [the statute] would not be contrary to the purposes of [the Labor-Management Reporting and

Disclosure Act].” The court ordered the government to respond to McQuilkin’s motion, *dk.* 145, and, on January 31, 2011, the government informed the court that it takes no position on McQuilkin’s motion.

Before making a determination of McQuilkin’s eligibility for a reduction of disability, the court is required by statute to hold a hearing. *See* 29 U.S.C. § 504. The burden will be on McQuilkin to demonstrate that the holding of a covered labor organization position would not be “contrary to the purposes” of the Labor-Management Reporting and Disclosure Act (LMRDA). That purpose is, as a general matter, to ensure that labor management officials “adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations.” LMRDA, §2(a), 29 U.S.C. § 401(a). The contours of that hearing are addressed in the accompanying order.

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ORDER

AND NOW, this 10 of May, 2011, for the reasons discussed in the accompanying memorandum, it is hereby **ORDERED** as follows:

1. On June 14, 2011, at 2:00 p.m., the court will hold a hearing on John McQuilkin's motion to reduce the period of disability.
2. This memorandum and order will serve as notice, as required by § 504, to the Secretary of Labor, the District Attorney for the City of Philadelphia, the United States Attorney for the Eastern District of Pennsylvania, and the United States Probation Office for the Eastern District of Pennsylvania. A copy of this memorandum and order will be sent, via certified mail, to each of these parties.
3. The parties will be permitted to submit affidavits and/or live testimony. To the extent live testimony is offered and permitted, each side will have an opportunity to cross-examine the other's witnesses.

4. The parties are directed to provide each other, and the court, with witness lists and copies of all exhibits on or before June 7, 2011, unless directed otherwise. The witness list shall include a brief description of each witness's expected testimony.
5. Except as otherwise provided herein, the court will follow procedures applicable to the resolution of disputed factors at sentencings. *See* United States Sentencing Guideline § 6A1.3.
6. The Clerk of Court shall send a copy of this memorandum and order to the following parties:
 - A. Secretary Hilda L. Solis
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
 - B. R. Seth Williams
District Attorney
Office of the District Attorney, City of Philadelphia
Three South Penn Square
Philadelphia, PA 19107-3499
 - C. Emily McKillip
United States Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
 - D. Kyle Watts
U.S. Probation Office
William J. Green Federal Building
600 Arch Street, Suite 2400
Philadelphia, PA 19106-1797

BY THE COURT:

/s/
Pollak, J.